

## Lasting Power of Attorney FAQ

A Lasting Power of Attorney is a legal document. It allows you to appoint someone that you trust as an 'attorney' to make decisions on your behalf. Attorneys can make decisions for you when you no longer wish to or when you lack the mental capacity to do so.

A Lasting Power of Attorney cannot be used until it is registered with the Office of the Public Guardian.

### What 'lacking mental capacity' means

Someone can lack mental capacity if they have an injury, disorder or condition that affects the way their mind works. This could mean they have difficulty making decisions all of the time or that it might take them a long time to make a decision.

You can read more about mental capacity and making decisions using the links below.

- [How to decide if a person lacks mental capacity](#)
- [Understanding the Mental Capacity Act](#)

### The benefits of a Lasting Power of Attorney

A Lasting Power of Attorney can help you plan how your health, wellbeing and financial affairs will be looked after. It allows you to plan in advance:

- the decisions you want to be made on your behalf if you lose capacity to make them yourself
- the people you want to make these decisions
- how you want the people to make these decisions



Having a Lasting Power of Attorney is a safe way of maintaining control over decisions made for you because:

- it has to be registered with the Office of the Public Guardian before it can be used
- you choose someone to provide a 'certificate', which means they confirm that you understand the significance and purpose of what you're agreeing to
- you can choose who gets told about your Lasting Power of Attorney when it is registered (so they have an opportunity to raise concerns)
- your signature and the signatures of your chosen attorneys must be witnessed
- your attorney(s) must follow the Code of Practice of the Mental Capacity Act 2005 and act in your best interests
- the Office of the Public Guardian provides helpful support and advice

## The different types of Lasting Power of Attorney

There are two different types of Lasting Power of Attorney:

- health and welfare Lasting Power of Attorney
- property and financial affairs Lasting Power of Attorney

### Health and welfare Lasting Power of Attorney

A health and welfare Lasting Power of Attorney allows you to choose one or more people to make decisions for things such as medical treatment. A health and welfare Lasting Power of Attorney can only be used if you lack the ability to make decisions for yourself.

### Property and financial Affairs Lasting Power of Attorney

A property and financial affairs Lasting Power of Attorney lets you choose one or more people to make property and financial affairs decisions for you. This could include decisions about paying bills or selling your home. You can appoint someone as an attorney to look after your property and financial affairs at any time. You can also include a condition that means the attorney can only make decisions when you lose the ability to do so yourself.

- [An attorney's duties under a Lasting Power of Attorney](#)



### How to make and register a Lasting Power of Attorney

You do not normally need professional advice to make a Lasting Power of Attorney as the forms are designed to be easy to complete. Depending on your situation, it may be a good idea to get advice from a solicitor before making a Lasting Power of Attorney. This can be useful if you have complicated personal, property or financial affairs.

A Lasting Power of Attorney can't be used until it's been registered with the Office of the Public Guardian.

## An attorney's duties under a Lasting Power of Attorney



If you appoint someone as your attorney under a Lasting Power of Attorney, they will be able to make important decisions on your behalf. It is important you understand what decisions they will be able to make. Find out more about the responsibilities of someone you appoint as an attorney.

### The duties of an attorney

You can choose someone to make important decisions on your behalf if you become unable to do so yourself. This person is called an attorney.

Your attorney is able to make important decisions on your behalf. Your attorney must:

- make decisions in your best interests
- only make decisions that the terms of the Lasting Power of Attorney allow them to make
- not pass on the powers they have been given unless authorised to do so
- keep your affairs confidential
- make sure their decisions benefit you and not them

If the attorney does not perform their duties properly they can be made to pay you for any losses you have suffered.

Mistreating or purposely neglecting someone who lacks capacity is a criminal offence. The penalty for this is a fine and/or a prison sentence of up to five years.



Further details on the duties of an attorney can be found in the Mental Capacity Act 2005 Code of Practice.

- [Download 'the Mental Capacity Act 2005 Code of Practice' \(PDF, 1131K\)](#)
- [Concerns about an attorney, deputy or a decision made for someone else](#)

### The Notify Person

Form LPA001 is used to let certain people know that the Lasting Power of Attorney is being registered. These are the 'people to be told' that are named on the Lasting Power of Attorney form.

They can object if they are worried about the Lasting Power of Attorney - for example, if they think the donor has been pressured to make it. They will have up to six weeks to do this.

Form LPA002 asks the Office of the Public Guardian to register the Lasting Power of Attorney.

You will also need to send the following items:

- the original Lasting Power of Attorney form
- the fee, or form LPA120 if applying for a fee remission or exemption

## Registering the Lasting Power of Attorney

It can take up to eight weeks to register a Lasting Power of Attorney if there are no problems with your application

A Lasting Power of Attorney can't be registered and used immediately and the amount of time you might have to wait can change.

The current waiting time to register a Lasting Power of Attorney is five weeks.

The Office of the Public Guardian must check the application to make sure there are no problems. There is also a six-week period when people have a chance to object to the Lasting Power of Attorney.

An attorney can only use a Lasting Power of Attorney once it has been registered with the Office of the Public Guardian. A health and welfare Lasting Power of Attorney can only be used once the donor (the person needing help) is unable to make their own decisions.

A court or a medical professional will help in deciding if someone has lost the mental capacity to make decisions.

- [How to decide if a person lacks mental capacity](#)

## When a Lasting Power of Attorney can be registered

A donor can register their own Lasting Power of Attorney while they are able to make their own decisions. Alternatively, it can be registered by the attorney(s).

There is no requirement to register a Lasting Power of Attorney immediately but there are advantages in doing so. Immediate registration means any errors in the Lasting Power of Attorney can be identified at a time when they can be corrected.

## Paying a fee to register a Lasting Power of Attorney

There is a fee to register a Lasting Power of Attorney. The fee can be reduced for someone on specific benefits or if they have a low income. You can get more information about how much a Lasting Power of Attorney costs using the link below.

- [Lasting Power of Attorney - what it costs](https://www.gov.uk/power-of-attorney/how-much-it-costs) (https://www.gov.uk/power-of-attorney/how-much-it-costs)

## The registration forms that need to be completed

There are two forms that need to be completed to register a Lasting Power of Attorney. They must be completed by the donor or the attorney, depending on who is applying to register the Lasting Power of Attorney.

The two forms are:

- LPA001 - notice of intention to apply for registration of a Lasting Power of Attorney
- LPA002 - application to register a Lasting Power of Attorney

These forms can be downloaded using the links below. You can also download all the forms and guidance you need in a single ZIP file from the Ministry of Justice website.

You can use the online form to request Lasting Power of Attorney forms by following [this link](http://www.justice.gov.uk/forms/opg).